

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Robert Dinapoli, in individual and
representative capacity as trustee of
The Dinapoli, Dinapoli & Mulcahy
Trust; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Robert Dinapoli, in individual and representative capacity as trustee of The Dinapoli, Dinapoli & Mulcahy Trust; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Robert Dinapoli, in individual and representative capacity as trustee of The Dinapoli, Dinapoli & Mulcahy Trust, owned the real property

1 located at or about 900 Jacklin Road, Milpitas, California, in May 2019 and
2 June 2019.

3 3. Defendant Robert Dinapoli, in individual and representative capacity as
4 trustee of The Dinapoli, Dinapoli & Mulcahy Trust, owns the real property
5 located at or about 900 Jacklin Road, Milpitas, California, currently.

6 4. Plaintiff does not know the true names of Defendants, their business
7 capacities, their ownership connection to the property and business, or their
8 relative responsibilities in causing the access violations herein complained of,
9 and alleges a joint venture and common enterprise by all such Defendants.
10 Plaintiff is informed and believes that each of the Defendants herein,
11 including Does 1 through 10, inclusive, is responsible in some capacity for the
12 events herein alleged, or is a necessary party for obtaining appropriate relief.
13 Plaintiff will seek leave to amend when the true names, capacities,
14 connections, and responsibilities of the Defendants and Does 1 through 10,
15 inclusive, are ascertained.

16
17 **JURISDICTION & VENUE:**

18 5. The Court has subject matter jurisdiction over the action pursuant to 28
19 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
20 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

21 6. Pursuant to supplemental jurisdiction, an attendant and related cause
22 of action, arising from the same nucleus of operative facts and arising out of
23 the same transactions, is also brought under California's Unruh Civil Rights
24 Act, which act expressly incorporates the Americans with Disabilities Act.

25 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
26 founded on the fact that the real property which is the subject of this action is
27 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

8. Plaintiff went to the property to visit Jacklin Commons in May 2019 and June 2019 (twice) with the intention to avail himself of its goods or services, motivated in part to determine if the defendants comply with the disability access laws.

9. Jacklin Commons is a facility open to the public, a place of public accommodation, and a business establishment.

10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide accessible parking in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

11. On information and belief the defendants currently fail to provide accessible parking.

12. These barriers relate to and impact the plaintiff's disability. Plaintiff personally encountered these barriers.

13. By failing to provide accessible facilities, the defendants denied the plaintiff full and equal access.

14. The lack of accessible facilities created difficulty and discomfort for the Plaintiff.

15. The defendants have failed to maintain in working and useable conditions those features required to provide ready access to persons with disabilities.

16. The barriers identified above are easily removed without much difficulty or expense. They are the types of barriers identified by the Department of Justice as presumably readily achievable to remove and, in fact, these barriers are readily achievable to remove. Moreover, there are numerous alternative accommodations that could be made to provide a greater level of access if complete removal were not achievable.

17. Plaintiff will return to Jacklin Commons to avail himself of its goods and

1 to determine compliance with the disability access laws once it is represented
 2 to him that Jacklin Commons and its facilities are accessible. Plaintiff is
 3 currently deterred from doing so because of his knowledge of the existing
 4 barriers and his uncertainty about the existence of yet other barriers on the
 5 site. If the barriers are not removed, the plaintiff will face unlawful and
 6 discriminatory barriers again.

7 18. Given the obvious and blatant nature of the barriers and violations
 8 alleged herein, the plaintiff alleges, on information and belief, that there are
 9 other violations and barriers on the site that relate to his disability. Plaintiff will
 10 amend the complaint, to provide proper notice regarding the scope of this
 11 lawsuit, once he conducts a site inspection. However, please be on notice that
 12 the plaintiff seeks to have all barriers related to his disability remedied. See
 13 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 14 encounters one barrier at a site, he can sue to have all barriers that relate to his
 15 disability removed regardless of whether he personally encountered them).

16
 17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 18 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 19 Defendants.) (42 U.S.C. section 12101, et seq.)

20 19. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 21 again herein, the allegations contained in all prior paragraphs of this
 22 complaint.

23 20. Under the ADA, it is an act of discrimination to fail to ensure that the
 24 privileges, advantages, accommodations, facilities, goods and services of any
 25 place of public accommodation is offered on a full and equal basis by anyone
 26 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 27 § 12182(a). Discrimination is defined, inter alia, as follows:

28 a. A failure to make reasonable modifications in policies, practices,

1 or procedures, when such modifications are necessary to afford
2 goods, services, facilities, privileges, advantages, or
3 accommodations to individuals with disabilities, unless the
4 accommodation would work a fundamental alteration of those
5 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

6 b. A failure to remove architectural barriers where such removal is
7 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
8 defined by reference to the ADA Standards.

9 c. A failure to make alterations in such a manner that, to the
10 maximum extent feasible, the altered portions of the facility are
11 readily accessible to and usable by individuals with disabilities,
12 including individuals who use wheelchairs or to ensure that, to the
13 maximum extent feasible, the path of travel to the altered area and
14 the bathrooms, telephones, and drinking fountains serving the
15 altered area, are readily accessible to and usable by individuals
16 with disabilities. 42 U.S.C. § 12183(a)(2).

17 21. When a business provides parking for its customers, it must provide
18 accessible parking.

19 22. Here, accessible parking has not been provided.

20 23. The Safe Harbor provisions of the 2010 Standards are not applicable
21 here because the conditions challenged in this lawsuit do not comply with the
22 1991 Standards.

23 24. A public accommodation must maintain in operable working condition
24 those features of its facilities and equipment that are required to be readily
25 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

26 25. Here, the failure to ensure that the accessible facilities were available
27 and ready to be used by the plaintiff is a violation of the law.
28

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 3 Code § 51-53.)

4 26. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 7 that persons with disabilities are entitled to full and equal accommodations,
 8 advantages, facilities, privileges, or services in all business establishment of
 9 every kind whatsoever within the jurisdiction of the State of California. Cal.
 10 Civ. Code § 51(b).

11 27. The Unruh Act provides that a violation of the ADA is a violation of the
 12 Unruh Act. Cal. Civ. Code, § 51(f).

13 28. Defendants’ acts and omissions, as herein alleged, have violated the
 14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
 15 rights to full and equal use of the accommodations, advantages, facilities,
 16 privileges, or services offered.

17 29. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 18 discomfort or embarrassment for the plaintiff, the defendants are also each
 19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 20 (c).)

21 30. Although the plaintiff was markedly frustrated by facing discriminatory
 22 barriers, even manifesting itself with minor and fleeting physical symptoms,
 23 the plaintiff does not value this very modest physical personal injury greater
 24 than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: December 28, 2019

CENTER FOR DISABILITY ACCESS

By:



Amanda Seabock, Esq.
Attorney for plaintiff